

**REMARKS**

Claims 1, 2, 5-7 and 9-11 are pending in this application.

**Rejection Under 35 U.S.C. § 102(b) of Claims 1, 5, 7, 9 and 11**

The Examiner rejects **claims 1, 5, 7, 9 and 11** under 35 U.S.C. § 102(b) as anticipated by Plotnick et al. (U.S. 2002/0178447). Claims 1, 5 and 9 are independent claims.

**Claim 1**

**Claim 1** includes the limitations:

*storing on a shared personal video recorder (PVR) network server at a distribution head end one or more TV programs containing a first class of metadata including a start location and a stop location of potentially undesired segments;*

*retrieving one of the TV programs for display;*

*defining, with a second class of metadata, unwanted segments specific to a user of said TV display,*

*matching the first class of metadata with the second class of metadata;*

*removing, responsive to matching the first class of metadata with the second class of metadata, undesired segments from the TV program; and*

*reimbursing source content suppliers for a financial loss occasioned by removed material, wherein the source content suppliers are distinct from an operator of the distribution head end.*

These limitations are not found in Plotnick.

Since this is a section 102(b) rejection, we first remind the Examiner that the standard for finding anticipation is rigorous. It requires finding all of the same elements arranged in the same way in a single reference, without using the claim to guide piecing together one phrase from here and another from there. In case law, a § 102 rejection depends on the claim as a whole and the reference as a whole, as explained in *Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369, 88 U.S.P.Q.2d 1751 (Fed. Cir. 2008). “[O]ur precedent informs that the ‘arranged as in the claim’ requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order. The test is thus more accurately understood to mean ‘arranged or combined in the same way as in the claim.’” *Id.*; see, also, fns. 4-5 (explaining “arranged as in the claim” in the context of reading the claim and reference

"as a whole"). The MPEP is consistent with this controlling case law. In MPEP § 2131, at 2100-67 (Rev. 6, Sept. 2007). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Accordingly, we need only show one element arranged differently.

Targeted advertising is the subject matter of Plotnick, rather than user-elected removal of content to save on pressing either a fast forward or 30 second skip button on the remote control. The Examiner does not any cite part of Plotnick as teaching the claimed **"removing, responsive to matching the first class of metadata with the second class of metadata, undesired segments from the TV program; and reimbursing source content suppliers for a financial loss occasioned by removed material, wherein the source content suppliers are distinct from an operator of the distribution head end."**

First, Plotnick does not read on removing undesired segments based on the second class of metadata. The Examiner relies on paragraphs 0106-0107, which merely target specific ads to specific audiences. OA p. 3, middle. The approach taught in paragraphs 0106-0107 **does not remove unwanted segments of time from the TV program**. The two relevant uses of the word "remove" in Plotnick involve changing around the queue of ads scheduled to be shown on a particular STB PVR. 0040, 0130; compare OA p. 4, top third. Plotnick's ad filters and user profiles control what ads are inserted into the unwanted segments. By changing the ads inserted into the unwanted segments, Plotnick hopes to entice the user not to skip a commercial. Therefore, Plotnick does not read on removing undesired segments based on the second class of metadata and the rejection under section 102 should be withdrawn.

In contrast to automatically removing unwanted segments from a TV program based on a second class of metadata, thereby shortening the TV program, Plotnick repeatedly describes the viewer manually pressing buttons on the remote control to skip ads or other undesired segments. The user's control, in Plotnick, is the remote control fast forward button, rather a second class of metadata that automatically shortens the TV program by removing unwanted segments. Both button presses and a second class of metadata inherently shorten the time that it takes to go from the beginning to the end

of the TV program; the claimed approach is more convenient for the viewer, but involves reimbursement of the source content supplier.

Second, Plotnick does not provide any mechanism for reimbursing source content suppliers for financial loss. The reference says nothing about reimbursing anyone, much less source content suppliers. And, the money flows described all involve advertisers, not source content suppliers.

The section of Plotnick on which the Examiner relies is paragraphs 0114-0121. Reading this section from beginning to end helps us understand what Plotnick envisions and teaches, from the “reference as a whole” perspective that is required of section 102 rejections. Plotnick teaches that advertisers specify their requirements for “viewership ratings, frequency of viewership by the target audience, and flight information.” 0118. “If the ads are displayed to the subscriber, the STB data server 1112 generates an ad play report 1160. ... The traffic and billing system 712 bills the advertiser based on requirements satisfied during the campaign.” Id. It “tracks the insertion results and bills the advertiser based on the insertions and contract requirements.” 0119. It avoids billing the advertiser when a subscriber fast forwards through or skips advertisements. 0120. This means that the advertiser is only billed for content actually displayed on the TV. There is no suggestion anywhere in Plotnick of the system operator paying money to the advertiser; there is no sense of reimbursing, because the advertiser is only billed for and only pays for ads actually displayed. Therefore, Plotnick does not read on reimbursing source content providers and the anticipatory rejection should be withdrawn.

We note that the Examiner asserts without evidence that “the VoD service will refund ... source content suppliers for financial loss occasioned by removed material.” OA p. 5, top half. The Examiner did not cite evidence for this proposition because it is not supported in Plotnick. Again, there is no mention in Plotnick of a refund or reimbursement. The only money flows involve advertisers, not source content providers.

Applicants respectfully submit that claim 1 should be allowable over Plotnick.

#### Claim 5

**Claim 5** includes the limitations:

*a shared personal video recorder (PVR) network server at a distribution system head end, said PVR network server for storing multiple TV programs with one or*

*more TV programs containing TV metadata defining unwanted program segments of the TV programs;*

*a processor and logic coupled to the shared personal video recorder network server adapted to compare the TV metadata with the stored metadata and to remove undesired program segments from a specific program to prepare the specific program for delivery to a specific TV display; and*

*further logic adapted to cause reimbursement of a source content supplier, the source content supplier distinct from the operator of the distribution system head end, for financial loss from removal of the undesired program segments from the specific program.*

These limitations are not found in Plotnick.

Claim 5 shares with claim 1 language that expresses removing undesired segments from a specific program, based on stored metadata, and causing reimbursement of a source content supplier. Therefore, it should be allowable over Plotnick for the reasons discussed above in the context of claim 1. In addition, there is language in claim 5 that the Office Action overlooks and fails to address.

Plotnick does not teach and the Examiner nowhere argues that Plotnick teaches logic to "remove undesired program segments from a specific program to prepare the specific program for delivery to a specific TV display." This variation between the language in claim 5 and claim 1 is not accounted for in the office action. As a result, there is an element of claim 5 for which the Examiner has not even argued anticipation.

Applicants respectfully submit that claim 5 should be allowable over Plotnick.

#### Claim 9

**Claim 9** includes the limitations:

*personal video recorder (PVR) server that stores multiple TV programs with one or more such programs containing TV metadata defining unwanted program segments of the TV programs;*

*a processor and logic coupled to the shared personal video recorder network server adapted to receive user instructions on demand to remove undesired program segments from a specific program, to evaluate the TV metadata of the specific program, and to remove the undesired program segments from the specific program; and*

*further logic adapted to cause reimbursement of a source content supplier for financial loss from removal of the undesired program segments from the specific program.*

These limitations are not found in Plotnick.

Claim 9 goes a step further than claims 1 and 5, to give the viewer on demand ability "to remove undesired program segments from a specific program." This variation between the language in claim 9 and claim 1 is not accounted for in the Office Action. As a result, the primary focus of claim 9 has not even been argued by the Examiner as being anticipated.

Therefore, claim 9 should be allowable over Plotnick.

Claims 7 and 11

**Claims 7 and 11** include the limitation:

*further including logic adapted to record and report viewer decisions to automatically remove undesired program segments.*

This limitation is not found in Plotnick.

What Plotnick does is automatically insert ads that the operator thinks will be enticing. It does not teach removing anything from the TV program (in the sense of shortening the TV program by removing undesired segments.)

Therefore, claims 7 and 11 should be allowable over Plotnick.

Applicants respectfully submit that claims 1, 5, 7, 9 and 11 should be allowable over Plotnick.

**Rejection Under 35 U.S.C. § 103(a) of Claims 2, 6 and 10**

The Examiner rejects **claims 2, 6 and 10** under 35 U.S.C. § 103(a) as unpatentable over Plotnick et al (U.S. 2002/0178447) in view of Haberman et al. (U.S. 2002/0013943).

Claim 2

**Claim 2** includes the limitation:

*The process as set forth in claim 1, further including time shifting two or more programs to fill time space resulting from removing the undesired segments from the TV program*

This limitation is not found in Plotnick in view of Haberman.

This limitation carries a bit further the notion that the TV program is shortened in length when undesired segments are removed, which is not found in Plotnick 0040 or 0130, on which the Examiner relies.

Therefore, claim 2 should be allowable over Plotnick in view of Haberman.

**Claim 6**

Claim 6 is allowable for at least the same reasons as claim 2, which it resembles, and claim 5 from which it depends. Therefore, claim 6 should be allowable over Plotnick in view of Haberman.

**Claim 10**

Claim 10 is allowable for at least the same reasons as claim 2, which it resembles, and claim 9 from which it depends. Therefore, claim 10 should be allowable over Plotnick in view of Haberman.

Applicants respectfully submit that claims 2, 6 and 10 should be allowable over Plotnick in view of Haberman.

**CONCLUSION**

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

Applicants would welcome an interview, if the Examiner is so inclined. The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

***Fee Authorization:*** The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (GBTV 1001-1).

Respectfully submitted,

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